

ESTTA Tracking number: **ESTTA267431**Filing date: **02/18/2009**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Facebook, Inc.
Granted to Date of previous extension	02/18/2009
Address	156 University Avenue Palo Alto, CA 94306 UNITED STATES

Correspondence information	Facebook, Inc. 156 University Avenue Palo Alto, CA 94306 UNITED STATES trademarks@cooley.com Phone:(650) 843-5000
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Applicant Information

Application No	77482477	Publication date	10/21/2008
Opposition Filing Date	02/18/2009	Opposition Period Ends	02/18/2009
Applicant	Lee, Jeremy McNeill 520 Lakewood Circle Walnut Creek, CA 94598 UNITED STATES		

Goods/Services Affected by Opposition


Class 042. All goods and services in the class are opposed, namely: Providing on-line non-downloadable software for the enhancement of the experience of online browsing of products and services and shopping by allowing users to deliver and receive recommendations, reviews and advice on social networking sites, and providing on-line non-downloadable computer programs for sending, creating, receiving, customizing and personalizing digital images, computer graphics, text, metadata, video and photographs, and hyperlinks and hyperlinked files, via a computer and communications network

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	78920335	Application Date	06/29/2006
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	THE WALL
Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 035. First use: Providing an online directory information service featuring information regarding, and in the nature of, collegiate life, general interest, classifieds, virtual community, social networking, photo sharing, and transmission of photographic images; advertising and information distribution services, namely, providing classified advertising space via the global computer network; promoting the goods and services of others over the Internet</p> <p>Class 038. First use: Providing online chat rooms and electronic bulletin boards for registered users for transmission of messages concerning collegiate life, general interest, classifieds, virtual community, social networking, photo sharing, and transmission of photographic images</p> <p>Class 042. First use: Computer services, namely, hosting online web facilities for others for organizing and conducting online meetings, gatherings, and interactive discussions; and computer services in the nature of customized web pages featuring user-defined information, personal profiles and information</p> <p>Class 045. First use: Internet based introduction and social networking services</p>

Attachments	78920335#TMSN.jpeg (1 page)(bytes) NOO DRUNKWALL.pdf (6 pages)(116065 bytes) Exhibit re drunkwall.pdf (1 page)(173227 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Emily Burns/
Name	Facebook, Inc.
Date	02/18/2009

Certificate of Transmission

I hereby certify that this correspondence is being transmitted via the Electronic System for Trademark Trials and Appeal (ESTTA) to: the Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451.

_____(Name)

_____(Date)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial No. 77/482477
For the Trademark DRUNK WALL
Published in the Official Gazette on October 21, 2008

FACEBOOK, INC.,)	
)	
Opposer,)	
)	Opposition No.
v.)	
)	
JEREMY McNEILL LEE,)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Opposer Facebook, Inc. ("Facebook"), a Delaware corporation having its principal place of business at 156 University Avenue, Palo Alto, CA 94301, believes that it will be damaged by the issuance of a registration for the mark DRUNK WALL, as applied for in Application Serial No. 77/482477 filed on May 23, 2008 by Applicant Jeremy McNeill Lee ("Applicant"), an individual, with a mailing address at 520 Lakewood Circle, Walnut Creek, CA 94598.

As grounds for opposition, Facebook alleges that:

1. Facebook is the world's leading provider of online social networking services. Indeed, Facebook's website at www.facebook.com has been recognized as among the top five most-trafficked websites of any kind in the world. The Facebook website site allows computer users to communicate with existing friends, make new friends, organize groups and events and share their personal profiles, statuses, activities, photos, links and videos and to create online communities of users with shared interests and connections.

2. Facebook's services were first offered in 2004 as a networking site at Harvard University. Over the following year, 800 additional college networks were added in rapid succession. In 2006, access to the Facebook service was progressively expanded so that anyone with a valid email address could register as a Facebook user. As of 2009, Facebook provides social networking services in 35 languages to over 175 million active users worldwide. The Facebook site is currently the most popular photosharing application on the Internet, with more than 700 million photos and 4 million videos uploaded each month. There are more than 600,000 entrepreneurs and software developers worldwide who have created over 52,000 software programs (known as "applications") for the Facebook platform. Worldwide, Facebook users spend more than 2.6 billion minutes on the Facebook site each day.

3. Facebook provides tools for each of its users to create a personal web page ("Profile Page") on which the user can choose to display personal information such as education or professional background, favorite music, books, or television shows, political leanings, and contact information.

4. Facebook also provides on each Profile Page a means through which users can communicate with each other, including online chat and private messages that are sent directly to

users' inboxes, similar to e-mail. An additional method of communication allows Facebook users to leave items such as textual messages, links, photographs, or video on its own or another user's Profile Page. Facebook offers these and other services under the "WALL" mark.

FACEBOOK'S MARKS

5. Facebook is the owner of pending U.S. Application Serial No. 78/920335 for the mark THE WALL, which was filed on June 29, 2006 for the following goods and services:

- in International Classes 35: providing an online directory information service featuring information regarding, and in the nature of, collegiate life, general interest, classifieds, virtual community, social networking, photo sharing, and transmission of photographic images; advertising and information distribution services, namely, providing classified advertising space via the global computer network; promoting the goods and services of others over the Internet;
- in International Class 38: providing online chat rooms and electronic bulletin boards for registered users for transmission of messages concerning collegiate life, general interest, classifieds, virtual community, social networking, photo sharing, and transmission of photographic images;
- in International Class 42: computer services, namely, hosting online web facilities for others for organizing and conducting online meetings, gatherings, and interactive discussions; and computer services in the nature of customized web pages featuring user-defined information, personal profiles and information; and
- in International Class 45: internet based introduction and social networking services.

6. In addition, Facebook owns common law rights in the WALL mark, which has been continuously, prominently, and conspicuously in use on its website and other materials in

interstate commerce in the United States. All of Facebook's marks that consist of or incorporate the term WALL will hereafter be referred to as the "WALL Marks."

7. The WALL Marks are suggestive marks, and thus inherently distinctive.

APPLICANT'S USE OF THE DRUNK WALL NAME AND MARK

8. Applicant filed Application Serial No. 77/482477 for DRUNK WALL ("DRUNK WALL Application") on an intent-to-use basis on May 23, 2008, in Class 42, for "providing on-line non-downloadable software for the enhancement of the experience of online browsing of products and services and shopping by allowing users to deliver and receive recommendations, reviews and advice on social networking sites, and providing on-line non-downloadable computer programs for sending, creating, receiving, customizing and personalizing digital images, computer graphics, text, metadata, video and photographs, and hyperlinks and hyperlinked files, via a computer and communications network." This application was published in the Official Gazette on October 21, 2008.

9. The services covered by Applicant's trademark application for DRUNK WALL, namely, software that allows users to exchange text, images, links and videos, overlap almost in their entirety with the services claimed in Facebook's THE WALL trademark application, which also generally consist of services that allow users to exchange text, images, links and videos.

10. On information and belief, Applicant is currently using his DRUNK WALL mark in connection with a software application on Facebook's website, which advertises itself as "the best place to chat drunk." A true and correct copy of the webpage for Drunk Wall Application, at <http://www.facebook.com/apps/application.php?id=18853555027>, is attached hereto as Exhibit A. Similar to the services Facebook offers under its WALL Marks, the Drunk Wall Application appears to enable users to exchange information over the Facebook site.

11. The mark Applicant proposes to register, DRUNK WALL, is substantially similar to the WALL Marks. The term “drunk” is descriptive of Applicant’s services, which, on information and belief, are intended to be a variation of the WALL service that is focused on a segment of consumers who are inebriated. Thus, the addition of the “drunk” term does little to create a unique commercial impression; the only distinctive element of Applicant’s mark is WALL. In contrast with the descriptive “drunk” portion of Applicant’s DRUNK WALL Mark, the term “wall” in DRUNK WALL appropriates the entirety of Facebook’s distinctive WALL Marks.

12. Applicant’s alterations to the WALL Marks, therefore, merely emphasize the similarity to Facebook’s well-known WALL Marks, and thereby create a likelihood of confusion with the WALL Marks.

13. There is no issue as to priority of use. Facebook offers, among others, services related to online communications and social networking, and has adopted its WALL Marks well prior to the filing of Applicant’s intent-to-use application.

GROUND FOR OPPOSITION:

LIKELIHOOD OF CONFUSION

14. Facebook incorporates by reference paragraphs 1 through 13, inclusive, as if fully set forth herein.

15. Applicant’s DRUNK WALL Mark is confusingly similar to Facebook’s WALL Marks in appearance, sound, meaning, and commercial impression.

16. The services described in the DRUNK WALL Application are the same as or closely related to the services offered by Facebook under the WALL Marks and identified in THE WALL Application.

17. The types of services identified in the DRUNK WALL Application and the types of services offered by Facebook under the WALL Marks are normally offered through the same channels of trade and specifically, here, are currently both offered on the Facebook website.

18. On information and belief, based on the development and existence of the Drunk Wall application on the Facebook website, Applicant filed the DRUNK WALL Application with knowledge of Facebook and its use of the WALL Marks.

19. Contrary to the suggestion created by the use of the DRUNK WALL mark, Facebook is neither affiliated with nor a sponsor of Applicant, and the services identified in the DRUNK WALL Application do not originate from Facebook.

20. Accordingly, registration of the DRUNK WALL Mark will damage Facebook because the DRUNK WALL Mark is likely, when used in connection with the services described in the DRUNK WALL Application, to cause confusion, or to cause mistake or to deceive. Thus the DRUNK WALL Mark is unregistrable under Sections 2(d) and 3 of the Trademark Act, as amended, 15 U.S.C. §§ 1052(d) and 1053, and should be refused registration.

21. Wherefore, Facebook prays that this Opposition be sustained, and that Application Serial No. 77/482477 be refused.

Respectfully submitted,

COOLEY GODWARD KRONISH LLP

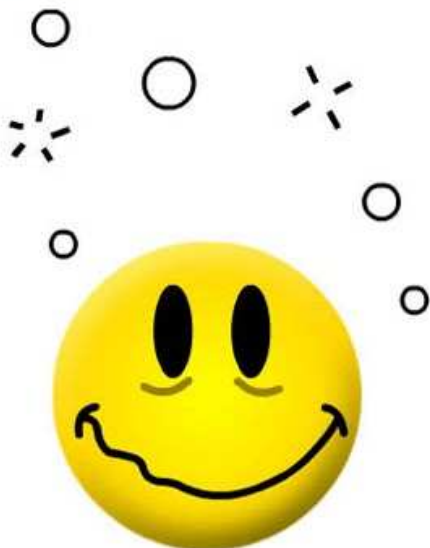
Date: February 18, 2009

By: 

Emily F. Burns
Attorneys for Opposer

Drunk Wall

Browse More Applications



The best place to chat drunk!

Remember:
The safest place to be Drunk is at home...
with your Computer!

Facebook is providing links to these applications as a courtesy, and makes no representations regarding the applications or any information related to them. Any questions regarding an application should be directed to the developer.

Discussion Board

Displaying 1 discussion topic Start New Topic | See All

DRUNK WALL TIPS & INSTRUCTIONS HERE!!!!

2 posts by 2 people. Updated on October 18, 2008 at 2:49pm

Reviews

Displaying 1 review Write Review | See All

The Wall

Contact Developer | Report Application

Share +

Go to Application

Become a Fan
View Updates
Block Application

Share +

About this Application

Users:
68 monthly active users

Categories
Chat, Dating

This application was not
developed by Facebook.

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